

PLANNING COMMISSION APPROVED MINUTES OF 01/24/05

2004-0863 – Sprint PCS [Applicant] **California Water Service Company** [Owner]: Application for a Use Permit on a 33,541 square-foot site to allow a 50-foot tall monopole in a residential zoning district. The property is located at **800 Carlisle Way** in an R-0 (Low Density Residential) Zoning District. (APN: 309-12-013) (Negative Declaration) AM

Andrew Miner, Project Planner, presented the staff report. He summarized the proposed application by highlighting the use, design, and alternative locations. He noted that the public has contacted staff with concerns and was informed of a petition against the application that would be submitted at the hearing. Staff also noted that a neighborhood meeting was held by Sprint PCS. Staff stated that four people attended the neighborhood meeting and their concerns included health, interference on household devices, noise, and lighting. Staff clarified that the last sentence in condition #10 should state: At no time shall equipment noise from any source exceed 60dB at the property line during daytime hours or 50 dB during night hours. Staff recommended approval of the Use Permit with the modification to the condition and to change the design to a tree pole.

Chair Moylan referred to condition 1U and confirmed with staff that the word pine refers to evergreen and condition 1V will make sure the design is appropriate. Staff agreed.

Comm. Klein referred to condition 2B and asked staff why there were issues with a gate that does not swing directly onto the street referring to the existing gate. Ms. Trudi Ryan, Planning Officer, clarified that this would be a new gate they would be adding to give access to the new telecommunication facility.

Vice Chair Hungerford asked staff if the air raid siren was usable and if the proposed monopole would be taller than the tower. Ms. Ryan responded that the air raid siren was on the former school property and all the schools had them in the late 50's early 60's and stated that the proposed monopole would be taller than the siren tower.

Chair Moylan clarified that the purpose of the hearing was not to debate the safety of the antenna since it has been established that they are required to view them as safe and therefore the commission would be determining if the location of the proposed antenna was appropriate. Ms. Ryan added that the commission would be determining if it was an appropriate place to put an antenna from an aesthetic point of view.

Chair Moylan opened the public hearing.

Sandra Steele, applicant, stated that Sprint PCS customers have expressed a definite need for coverage in the residential area. She stated that after looking at every possible candidate that was allowed to have wireless antennas under the Sunnyvale City Ordinance they decided to choose the site with an existing utility

use. Ms. Steele stated that the entire City zoning codes have been met including setbacks, noise, aesthetic, and health requirements. She urged for the approval of the application.

Peter Stefan, member of the public, stated that he lives a street away from the proposed site. He then expressed concerns with the installation of other cell phone carriers onto the site and compatibility issues. Mr. Stefan spoke about two main frequency bands and gave a brief explanation about both of them. Further he stated that he was not sure if the proposed site was the best site for the monopole. He suggested perhaps looking at a more unified approach to handle what is likely to be a continuing issue. He asked the commission to consider those points before allowing Sprint to move in.

Comm. Simons informed Mr. Stefan that the City Council approved a request from the Planning Commission for a Study Issue of cell phone tower consistency and design. Ms. Ryan noted that the Study Issue fell below the line and would be ranked again this year.

Comm. Simons then spoke about aesthetics and asked Mr. Stefan what he would prefer to see on site. Mr. Stefan responded that the commission should re-look at the policy of not putting antennas on park lands. Mr. Stefan suggested the location at the Community Center on Remington Drive to be a better location for the monopole.

Paul Healy, member of the public whose property borders the Cal Water site, felt that building a fake tree at the Cal Waters site was a detriment to the neighborhood and the discussion was about mitigating the detriment. Mr. Healy submitted a petition to the commission signed by 59 neighbors which reside on Kingfisher Way, Coventry Court, Arleen Avenue, Lillian Avenue, and Carlisle Way. He noted that everyone who signed the petition agrees that the application is an intrusion to the neighborhood and is unacceptable for the area. He then referred to the site plans and stated that the tower would be significantly higher than other vegetation on the site. Mr. Healy stated that he called neighboring cities about what their conditions were as far as placing cell phone towers in residential neighborhoods. He stated that the City of San Jose discourages the installations from going in.

Comm. Simons appreciated Mr. Healy's attendance. He asked Mr. Healy if he had to choose would he rather have a fake tree as an antenna for coverage or a monopole diminishing the scale of it. Mr. Healy responded that once you notice a fake tree they are quite unsightly.

Chair Moylan made reference to the comment Mr. Healy made about the height of the tower being misleading. Mr. Healy clarified that staff was not misleading but felt that the photos did not represent all view points.

Chair Moylan commented on the attendance of the neighborhood meeting and on the petition submitted. He commented that the turn-out of the meeting and

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the response of the signatures on the petition send out a mixed message and asked Mr. Healy if he had any explanation. Mr. Healy responded that probably the people were busy or did not pay attention to the notice sent to them by mail. He stated that the neighborhood does not want a cell phone tower on that site. Mr. Healy also noted the following issues as objections: noise, interference and lighting.

Chair Moylan asked Rebecca Moon, Assistant City Attorney if, legally, Mr. Healy could raise other issues as objections. Ms. Moon responded that she felt they could be noted for the record and felt the neighbors would not be precluded from raising any arguments. Chair Moylan stated that they were in constraint to not be able to debate the safety of the antenna because that is established by the Federal Government and not by the Commission. Ms. Moon stated that the Commission is limited to looking at aesthetics because the FCC regulates interference and safety issues.

Chair Moylan then stated that the noise issue is subject to a condition in the Use Permit. He asked Mr. Healy about the City's noise standard. Mr. Healy stated that within the staff report there was a reading of 60dB sound rating mentioned and stated that he felt it was a very high noise level to put at a permanent site.

Mei-Ling Stefan, member of the public, stated that she objects to any fake tree that she can see because it is very unsightly. She stated that she was concerned with the approval of the application because it might set a precedence for other companies to do the same. She wondered why Sprint could not share the repeaters of other carriers since the other carriers share 911 information and why they have to put up additional transmitters. Ms. Stefan noted from the staff report that Sprint can object to other people using their pole on aesthetic grounds. She asked why Sprint would have a say regarding aesthetics and not the neighbors. Ms. Stefan stated that she was not able to attend the neighborhood meeting but was very concerned and was not aware that this hearing would be the final hearing.

Chair Moylan stated that the decision of the meeting would not necessarily be final and asked staff for a brief explanation. Ms. Ryan clarified that the first meeting was a neighborhood outreach meeting offered by the applicant and this hearing is an official public hearing. She then stated that whatever decision was made by the Planning Commission was subject to a 15 day appeal period to the City Council which could be done by the applicant or any member of the public.

Sandra Steele, applicant, responded to the comments made by the public and stated that typically if another carrier applies for a conditional use permit they can be required by the city to co-locate on a monopine and that would be a preference. She then spoke about noise issues and stated that the only noise would come from two small cooling fans that are similar to those used on desk top computers. She then spoke about the City's noise ordinance and stated that it was 50dB in the residential areas and predicted noise levels to be 35 to 40dB at the property line. She further stated that she would be happy to conduct a

noise level test as part of the Conditions of Approval to confirm the specifications. She then responded to the issues of sharing frequencies with other carriers and stated that unfortunately every carrier has their own technology with frequencies and cannot share those frequencies but can locate on a tree pole or monopole at varying heights. She then confirmed that the neighborhood meeting did have four people attend and stated that she contacted staff to check if he had received any other concerns. She noted an e-mail was received from a neighbor stating that more coverage was needed in Sunnyvale in residential areas. She then spoke about aesthetics and stated that she would be happy to turn the monopole into a tree pole and stated that the technology really has changed and there are many different tree types that can be selected to fit in with specific environments and vegetations.

Comm. Babcock asked Ms. Steele what the height of the alarm system pole or high tension wires were. Ms. Steele responded that one of the pine trees was measured at 34 feet 6 inches and a cottonwood tree was measured at 60 feet. Ms. Steele stated that the telephone poles are typically at 30 to 35 feet in height. Staff clarified that the 60 foot cottonwood tree is not on the Cal Water site but is on the adjacent property.

Chair Moylan asked Ms. Steele who would own the tree pole if it were approved. Ms. Steele responded that it would be a Sprint PCS tree pole and any future tenants would have to go to Sprint as the landlord to enter into an agreement and then they would have to go through a separate conditional Use Permit through the City to be able co-locate on that Sprint pole. Staff clarified that the tenant would have to get a lease from Cal Water for their ground equipment.

Chair Moylan closed the public hearing.

Vice Chair Hungerford then asked staff if there was a maintenance requirement to annually take a look at the tree and make sure it is in tact. Staff responded that in most cases they come with warranties that they stay structurally sound and do not litter. Staff noted that a condition to state that the tree should be kept clean could be added.

Comm. Sulser made a motion on Item 2004-0863 to adopt the Negative Declaration and approve the Use Permit subject to the Conditions of Approval. Comm. Babcock seconded.

Comm. Sulser commented that there is a problem with residential cell phone coverage and stated that he personally suffers from that problem with his cell phone carrier. He stated that if you look at a Sunnyvale map in order to remedy the problem you have to have cell phone towers that are somewhat near where people live. He stated that the tree pole would not be any worse from the pre-existing condition.

Comm. Simons did not support the motion due to the comments from the community not wanting a fake tree. He stated that he would support a utility pole but not necessarily a fake tree.

Chair Moylan asked Comm. Simons if he interprets the public testimony to be asking for a utility pole. Comm. Simons responded that he got a strong impression from the testimony that the people did not want the fake tree to be in the residential neighborhood.

Vice Chair Hungerford offered a friendly amendment to include in the conditions to have the tree pole maintenance and reviewed annually to make sure it remains in approximately the same shape when it was put in and repaired if needed. Accepted by maker.

Chair Moylan supported the motion. He made a comment that the Commission is suppose to be basing their votes on whether the monopole is consistent or inconsistent with the General Plan of Sunnyvale. He stated that they have to decide if this is an incompatible use or inappropriate development. He further stated that it is very hard to meet both requirements at the same time. He stated that he has a concern with the many signatures in the petition, the small number of people in the audience, and the small of amount of people who attended the neighborhood outreach meeting. He stated that he has to base his decision on the General Plan and therefore supports the motion.

Final Motion:

Comm. Sulser made a motion on Item 2004-0863 to adopt the Negative Declaration and approve the Use Permit subject to the Conditions of Approval and to include that the tree pole be maintained and reviewed annually to make sure it remains in approximately the same shape it was put in and repaired if needed. Comm. Babcock seconded.

Motion carried 5-1 with Comm. Simons dissenting and Comm. Fussell absent.

Ms. Ryan stated that the decision is final unless appealed to the City Council with a payment of the appeal fee within the 15-day appeal period.